In the Supreme Court of the United States

OCTOBER TERM, 1969

No. 443

CONTINENTAL INSURANCE COMPANY, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 3a–8a) is reported at 409 F. 2d 727. The Board's decision and order (Pet. App. 11a–19a) are reported at 172 NLRB No. 48, and its decision in the related representation proceeding (Pet. App. 20a–30a) is reported at 169 NLRB No. 85.

JURISDICTION

The judgment of the court of appeals was entered on May 12, 1969, (Pet. App. 9a–10a). The petition for a writ of certiorari was filed on August 8, 1969. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

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QUESTION PRESENTED

Whether the National Labor Relations Board abused its discretion to determine appropriate collective bargaining units by concluding that the Company's New York City and Newark, New Jersey branch offices each constituted an appropriate unit.

STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151 *et seq.*), are set forth at pp. 1a–2a of the Appendix to the petition.

STATEMENT

The Company is engaged in the sale and service of casualty, property, and life insurance throughout the United States and Canada (A. 217; 8–9).[1] In May 1967, the Union[2] filed representation petitions with the Board seeking to represent the claims adjusters, examiners and investigators at the Company's New York City and its Newark and Perth Amboy, New Jersey, branch claims offices. The petitions were consolidated and a hearing was held, on the basis of which the Board made the following findings of fact:

The Company's home office, which develops general guidelines and makes the final decisions on personnel matters, is located in New York City (A. 219; 9–10, 12–16, 28–29, 31). The Company's operations are con-

[1] "A." references are to the appendix filed in the court below.

[2] American Communications Association, Communications Trade Division, International Brotherhood of Teamsters, Chauffers, Warehousemen and Helpers of America.

ducted through nine departments, each serving a different geographic area and each headed by a departmental manager who is responsible for the Company's business within his territory (A. 217–218; 9, 17–20, 28, 166–167). The Metropolitan New York City Department covers New York City, and Nassau, Suffolk, Putnam, Westchester, and Rockland counties in New York State, while the Middle Department covers the States of New Jersey, Pennsylvania, West Virginia, Maryland, Delaware, parts of Virginia, and the District of Columbia (A. 20).

Within each department there are a number of branch claims offices, which have exclusive responsibility for processing claims within their respective territories (A. 219, 102–103, 123–125).[3] There are three branch offices in the Metropolitan Department, located in New York City, Huntington, and White Plains; there are nine such offices, including those at Newark and Perth Amboy, New Jersey, within the Middle Department (A. 217; 20–22, 30, 166–170, 211–212). Branch offices do not report to each other; the employees of one branch have no daily contact with employees in other branch offices; and there are few temporary employee transfers among the branch offices (A. 218–219, 221; 114, 116–117, 120–123, 145–146, 185).

Each branch office is headed by a branch manager who is responsible to the head of the department. The branch manager supervises the investigation and set-

[3] Claims of unusual size are supervised by departmental personnel (A. 219; 44–45, 93–94, 96, 102, 136–137, 163–165).

tlement of claims by the adjusters working in his office (A. 218; 29, 84, 95–96, 125–127). He also has authority to initiate various types of personnel action, including recruitment, interviewing, and hiring (A. 15–16, 101, 111–114, 142–143, 210, 211); make initial achievement reports (A. 133); and recommend salary adjustments (A. 12–13, 101), vacation schedules (A. 134), that adjusters be placed on probation (A. 127–128), and that their draft authority be increased. These actions and recommendations are generally approved by the Company (A. 219).

The Board, although noting the centralized control and coordination of the Company's claims operations, nevertheless found that the New York City, Newark, and Perth Amboy branch offices each possessed sufficient autonomy and separate identity to make them appropriate units for collective bargaining purposes. Accordingly, it directed that elections be held within each of these units (Pet. App. 23a–25a, 28a–29a). The Union won the elections in the New York City and Newark units and was certified as the exclusive bargaining representative of the employees in those units (Pet. App. 15a). Thereafter, the Company refused to recognize and bargain with the Union on the ground that the units were inappropriate. The Union filed unfair labor practice charges, and in the resultant unfair labor practice proceeding the Board found that the Company had violated Section 8(a)(5) and (1) of the Act (Pet. App. 11a–17a). The Board ordered the Company to cease and desist from the unfair labor practice found, to bargain with the Union

upon request, and to post the appropriate notices (Pet. App. 17a–19a). The court of appeals sustained the Board's findings and enforced its order (Pet. App. 3a–8a).

ARGUMENT

Section 9(b) of the Act empowers the Board to decide "in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by [the] Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof." In exercising this authority, the Board has concluded that a single district or branch insurance office possessing sufficient autonomy is an appropriate unit for collective bargaining. See *Quaker City Life Insurance Co.*, 134 NLRB 960, enforced, 319 F. 2d 690 (C.A. 4). Applying this principle to the facts shown here, the Board concluded that the Company's New York City and Newark, New Jersey branch offices were appropriate bargaining units. The only question actually presented is whether that conclusion, which was sustained by the court below, constitutes a reasonable exercise of the discretion conferred on the Board by Section 9(b). This issue, which involves essentially an assessment of the facts of this particular case, does not warrant further review.

In any event, the Board's conclusion that the New York City and Newark, New Jersey branch offices were appropriate bargaining units was justified on the record here. The evidence shows that the branch claims offices function independently of each other,

each having exclusive responsibility for its own territory, and that there is no significant interchange of employees among the offices. Each branch office manager has complete control over the processing of the vast majority of claims in his territory, and exercises considerable authority over decisions affecting wages, hours, and conditions of employment. (*Supra*, pp. 3–4.) Finally, as pointed out by the court below (Pet. App. 7a), "a Branch unit of claims adjusters, examiners and investigators does not conflict with any previous department-wide unionization of other Company employees."

Petitioner's contention (Pet. 10–11) that Section 9(b) should be supplemented by the establishment of specific guidelines and standards was rejected in *Packard Motor Car Co.* v. *National Labor Relations Board*, 330 U.S. 485, where this Court stated (p. 491): "The issue as to what unit is appropriate for bargaining is one for which no absolute rule of law is laid down by the statute, and none should be by decision. It involves of necessity a large measure of informed discretion, and the decision of the Board, if not final, is rarely to be disturbed." Nor is there a conflict of decisions. The cases cited by petitioner (Pet. 11–15) are factually distinguishable, and the court so distinguished them (Pet. App. 7a–8a).[4]

[4] *National Labor Relations Board* v. *Davis Cafeteria, Inc.*, 396 F. 2d 18 (C.A. 5), *National Labor Relations Board* v. *Purity Food Stores, Inc.*, 376 F. 2d 497 (C.A. 1), certiorari denied, 389 U.S. 959, and *National Labor Relations Board* v. *Frisch's Big Boy Ill-Mart, Inc.*, 356 F. 2d 895 (C.A. 7), involved the propriety of single store and restaurant units within a geographically

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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cohesive chain, in which the courts found no real local autonomy and a frequent interchange of employees. In *Local 1325, Retail Clerks* v. *National Labor Relations Board*, 71 LRRM 2721, 2729 (C.A.D.C., July 2, 1969), the District of Columbia Circuit held that, while a single store unit, among others, might have been justified, it could not accept the Board's conclusion that a statewide unit was appropriate in that case, since it resulted in including "a 'distant' Rhode Island store and exclud[ing] a 'nearby' Massachusetts store."

The court below stated (Pet. App. 8a) that it chose not to follow *State Farm Mutual Automobile Insurance Co.* v. *National Labor Relations Board* (C.A. 7), 68 LRRM 3029, to the extent that it "gives conclusive weight to the single factor of the company's administrative structure and organization." On March 26, 1969, the Seventh Circuit, sitting *en banc*, reversed the panel decision in *State Farm*, 70 LRRM 3138. A petition for certiorari has recently been filed in that case, No. 276, this Term, which the Board has opposed for essentially the same reasons advanced herein.

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